IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4182 OF 2005

Hemant Gangappa Khilare ...Petitioner

Vs.

State of Maharashtra & Ors. ...Respondents

Mr.Surel S.Shah for the Petitioner.
Mrs.M.P.Thakur, A.G.P. for Respondent Nos.1 to 3.
Mr.A.P.Kulkarni for Respondent No.5.

CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL,JJ.

DATE : 3rd OCTOBER, 2006

P.C.

1. Heard Mr.Shah, the learned Counsel for the Petitioner. Rule.

2. Mrs.Thakur, the learned A.G.P. waives service for Respondent Nos.1 to 3 and Mr.Kulkarni waives service for Respondent No.5. Respondent No.6 is a formal party.

3. In this Petition filed under Article 226 of the Constitution, the Petitioner is seeking a Writ of Mandamus or an order in the like nature directing Respondent No.3 to grant approval to his appointment as a Peon in Respondent No.4 School (Matoshree Malanbai Apparao Kasture High School (Marathi Medium) at Solapur. He claims that he came to be appointed for the said post from 1st July, 2002 in the reserve quota of VJNT in the Pay Scale of Rs.2250-3200. His appointment was on probation and the probation period

had already expired on 13th June, 2006. In spite of his several reminders to Respondent No.4, the Competent Authority did not grant approval to his appointment and Respondent No.3 did not reply to the said proposal submitted by Respondent No.4. He further claims that Respondent No.6, who was initially holding the post of Peon, submitted his resignation on 21st March, 2002 and the same was accepted on 25th June, 2002. He was relieved from service on 30th June, 2002. At no point of time, Respondent No.6, as waiver raised grievance regarding the acceptance of his resignation and the consequent relieving from service. Not only that but even Respondent No.6 addressed a letter dated 16th September, 2002 to Respondent No.3 for final payment of the Provident Fund amount.

4. The affidavit-in-reply filed by the Education Officer dated 4th October, 2005 does not dispute the fact that Respondent No.6 has been relieved from service on 30th June, 2002 and there is no dispute pending between Respondent Nos.3 and 4 on one hand and Respondent No.6 on the other hand.

5. Consequent to the directions issued by an order dated 4th September, 2006, the said Education Officer has filed an additional affidavit placing on record the sanctioned strength of both schools for the current academic year 2006-07 and it has been pointed that so far as the Matoshree Malanbai Apparao Kasture

High School (Marathi Medium) at Solapur is concerned, there are nine sanctioned posts of non teaching staff and out of them two are Peon posts. The names of Mr.P.G.Gaikwad and the Petitioner have been shown as two peons. However, as noted earlier, Mr.P.G.Gaikwad has been relieved from service on 30th June, 2006 and therefore, there is no impediment in granting an approval to the Petitioner's appointment from 1st July, 2002 for the post of Peon, as the said approval will be within the sanctioned staff in pattern.

6. Hence, this Petition succeeds and the same is hereby allowed. The Respondent No.3 is hereby directed to grant approval to the Petitioner's post as Peon with effect from 1st July,2002. Rule is made absolute accordingly with no order as to costs.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE,J.)**